

February 6, 2003

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Ex Parte Notice. CC Dockets Nos. 01-338, 96-98, 98-147. In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Services Offering Advanced Telecommunications Capability.**

Dear Ms. Dortch,

Minority business has focused its attention to the Federal Communication Commission's (FCC) Triennial Review of requiring local exchange carriers to comply with Unbundled Network Elements Platform (UNE-P) rules. Since the FCC's last review in December 20, 2001, the telecommunications industry has suffered from severe stagnation in development and growth. This stagnation has negatively impacted small minority business. The current regulatory pricing model, Unbundled Network Elements Platform (UNE-P), erodes jobs, fails to encourage facilities-based competition, discourages investment in broadband services, and threatens the economy. Hence, minority business strongly encourages the FCC to terminate UNE-P as a business model.

**Small Minority Business Interest**

The National Native American Chamber of Commerce (NNACC) promotes job creation, economic growth, sustainable development and improved living standards for Tribal Nations, Native Americans, and Native American businesses. NNACC works to build for the future and promote competitiveness in the U.S. and global marketplaces by strengthening and safeguarding economic infrastructure. Additionally, NNACC serves as an advocate for Native American communities and businesses as well as a resource for consumers and businesses dedicated to serving both the needs of our members and the economic development needs of the broader Native American community.

The National Black Chamber of Commerce (NBCC) represents the interests of the more than 85,000 Black-owned businesses with 201 affiliated chapters located in 40 states and the District of Columbia. Telecommunications companies need sufficient incentives to promote capital investment in their networks, which in turn will promote ubiquitous and competitive deployment of broadband services. As seen in the wireless industry, the absence of substantial regulation spurred investment and competition that ultimately benefited consumers in the form of higher quality, greater choice and lower

prices. Chief among the NBCC's goals is the removal of barriers to commerce. The current UNE-P regulatory scheme is just such a barrier.

## **Introduction**

Among other goals, the 1996 Telecommunications Act intended to replace the regulation-mandated separation of markets with a more competitive marketplace (Sections 251 and 271) and encourage deployment of infrastructure that would usher in advanced telecommunications services to all Americans (Section 706).

To accelerate the development of competition and promote investment in advanced telecommunications infrastructure, the Act called for a pricing model referred to as UNE-P. Unfortunately, UNE-P has done just the contrary, inhibiting the realization of this goal. UNE-P has resulted in a failure to encourage facilities-based competition, it has acted as a disincentive to invest in broadband services and it has led to the loss of jobs.

Of particular interest to minority business is the failure of UNE-P relative to the deployment broadband services. As you know, broadband services allow minority business to engage in time saving communications, e-commerce, distance training, federal/national procurement proceedings, and a host of other activities. Yet, at this time, broadband services have yet to reach all of America as promised by Section 706. This is especially true for many minority businesses that typically work in remote rural areas and inner cities. NNACC's and NBCC's members have repeatedly expressed their concerns about the lack of high-speed services. Subsequently, NNACC and NBCC file this ex-parte submission to draw attention to the failure of UNE-P.

## **UNE-P Creates Unsustainable Competition**

Requiring incumbent carriers to make certain elements of their local networks available on a leased basis to competitive local exchange carriers at a 50-70% wholesale discount is bad business policy. Such regulations devalue existing infrastructure by establishing pricing that will never duplicate current infrastructure. This is not a policy that bolsters facilities based competition. In fact, UNE-P favors rapid market entry over sustainable long-term competition. Maintaining UNE-P in order to maximize the number of competitors undermines meaningful competition. This practice serves as a crutch to companies that eventually will fail.

Many competitive carriers have declared that the UNE-P rules are working. Yet, one only has to observe the industry's performance over the past several years to conclude that this is not the case. The industry's own data shows that the UNE-P rules are not working. For example, while the incumbents' access lines have declined in the past three years and the competitive carriers saw growth, many continue to fail. The faulty business model borne out of UNE-Ps where competitive carriers do not build alternative networks is coming to fruition. Clearly, under UNE-P the telecommunications industry is

suffering. While competition in the industry is vital, it should not come at the expense of strengthening existing facilities or building new ones.

Real competitive policy enables market forces of supply and demand to determine market prices. The UNE-P rates have and will continue to harm competition. The FCC must free the industry from an ineffective artificial competitive environment by acknowledging that UNE rules are harmful to competition and implement sweeping changes. Furthermore, the FCC needs to encourage the construction of alternative networks so that small minority business can enjoy a real choice of providers by removing unbundling requirements for services in markets that are clearly competitive.

### **UNE-P Stifles Investments in Broadband**

Under UNE rules, incumbent local phone companies have significantly reduced their spending on advanced network services. These rules force incumbents to lease parts or all of their networks for less than what they paid for them. When businesses cannot recoup the costs of their investments, they are discouraged from investing, and the telecommunications network suffers and consumers lose.

The incumbents are reluctant to invest in advanced telecommunications capabilities for fear that the FCC will require them to offer the modernized network to competitors at the wholesale discounts. Additionally, with availability of the UNE-Platform at artificially low rates set by regulators there is no incentive for competitors to build competing networks. Thus, the FCC's reliance on UNE-P is impeding the facilities based competition that is necessary to achieve the goal of Section 706.

We believe that more investment in telecommunications infrastructure will lead to more broadband services. Numerous studies state that such investments explain increases in national productivity. Small minority businesses typically operate in inner city and rural areas that are traditionally under-served. Broadband services allow our businesses to compete on a more level playing field. The FCC needs to stimulate investment in new and advanced networks by eliminating rules that stifle local phone companies from fully competing with others in the market.

Policies aimed at spurring high-tech investment through broadband would make small minority business more capable to compete in the growing e-commerce environment. Our members need and want high-speed Internet access not only in traditional business location settings but in remote and inner city areas as well, where many work and reside. Access to global markets through broadband means a better economy for small minority business.

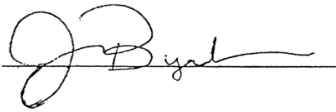
During the past several years, a variety of telecommunications experts have concurred that investments in high-speed Internet services are not taking place as fast as they should be and that public policy needs to create incentives for speeding investment in this area. Increased investment means a better economy and a better economy translates into growth for small minority business.

## Conclusion

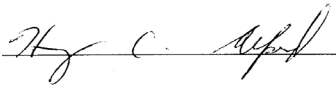
In the three years since the last review, the market has demonstrated that the current pricing model does not work. The FCC *must* enact changes to UNE-P rules. NNNAC and NBCC suggest that in particular, the FCC should examine these rules in the context of the broadband market. Broadband reflects meaningful differences in service functionality and encompasses a discrete set of UNEs. Take the necessary action that will stimulate investment in infrastructure and, in turn, stimulate delivery of high-speed services.

The goal of the Act was to encourage investment and competition. UNE-P was designed as a temporary solution. Maintaining the UNE-P rules in order to maximize the number of competitors will continue to negatively affect investment and jobs. The FCC must, instead, rely on true facilities based competition. Business, including small minority business, will then be able to enjoy widespread access to business enhancing applications.

Regards,

A handwritten signature in black ink, appearing to read "Joe Byrd", written over a horizontal line.

Joe Byrd  
President  
National Native American Chamber of Commerce

A handwritten signature in black ink, appearing to read "Harry C. Alford", written over a horizontal line.

Harry Alford  
President,  
National Black Chamber of Commerce